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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,440	01/15/2004	John E. Butcher	RICZ 2 00009	5618
27885	7590	12/05/2007		
FAY SHARPE LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			EXAMINER QUINN, COLLEEN M	
			ART UNIT 3634	PAPER NUMBER
			MAIL DATE 12/05/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/758,440	Applicant(s) BUTCHER ET AL.	
	Examiner Colleen M. Quinn	Art Unit 3634	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-8 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Day et al. (US 4,104,809). Day et al. disclose a system for organizing and displaying wall covering samples, said system comprising a plurality of wall covering samples (50), each sample having a color characteristic; a plurality of separate sample holders (each case 12, and index 46a), each of the holders being separate from the other and being dedicated to a different color group and configured to hold a set of the samples; wherein the samples are organized into the holders based upon their respective color characteristics such that each holder holds a set of samples having like color characteristics (column 1, lines 34-35), wherein at least one of the holders comprises a deck (figures 1 & 3) that holds the set of samples stacked atop one another, wherein the samples held by the deck have holes (48) therein and the deck comprises a pin (16) that passes through the holes in the samples held by the deck to thereby secure the set of samples in the deck such that individual samples are selectively rotatable about the pin in a plane substantially normal to the pin (figure 1), wherein said holders have faces (46a) that include indicia/coding representative of the color groups thereon to indicate the color group to which the respective holders are dedicated (column 3, lines 50-60) wherein the color characteristics of the samples

comprise the samples' predominate hue (color family), or intensity (shades) (column 3, lines 43-44).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. as applied to claims 1 and 4,8 above and further in view of McPherson et al. (US 5,109,991). Day et al. fail to disclose a case having a plurality of compartments in which the holders are selectively stored.

However, McPherson et al. discloses a wall covering sample storage case (10) having a plurality of compartments (22) in which holders (36) are selectively stored in each compartment, providing a storage container which permits ready removal and replacement of the holders (column 1, lines 19-23).

Therefore, it would have been obvious to one of ordinary skill in the art to provide the system of Day et al. with a case, having a plurality of compartments, as taught by McPherson et al. in order to provide a storage container which permits ready removal and replacement of the holders.

Claims 9 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. alone, as applied to claims 1 and 4-8 above. Though claims 9 and 11-14 are directed towards a method for organizing and displaying wall-covering samples, and Day et al. disclose an apparatus that organizes and displays wall-covering samples, the method is inherent since Day et al. teach sorting the samples into sets having like color characteristics (column 3, lines 43-44); holding the sets of samples together in color groups, each color group being distinguished by that color characteristic which caused the samples to be sorted into the set that comprises samples that are stacked atop one another such that individual samples are selectively rotatable with respect to one another about a common axis, said common axis being substantially normal to the samples' faces as they are stacked atop one another and wherein the color characteristic is a predominate hue of the samples or an intensity of color of the samples (column 3, lines 43-44), as advanced in the above rejections.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. in view of McPherson et al., as applied to claims 2 and 3 above. Though claim 10 is directed towards a method for organizing and displaying wall-covering samples, and McPherson et al. disclose an apparatus that organizes and displays wall-covering samples, the method is inherent since McPherson et al. teach a display rack having a plurality of compartments in which holders are selectively stored in each compartment, providing a storage container which permits ready removal and replacement of the holders (column 1, lines 19-23) without having to move the other holders.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. claims 9 and 11-14 above and further in view of Kramer et al. (US 2,786,281). Day et al. fail to disclose a non-color design element that varies from sample to sample.

Kramer et al. teach organizing and displaying samples (B, C) that have a non color design element, the weave/construction of the sample, that varies from sample to sample (column 2, lines 52-54), providing an organized means for displaying textile swatches.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the display of Day et al. with samples that vary in construction, as well as color, in order to provide a means for organizing and displaying a variety of materials that is both portable and secure.

### ***Response to Arguments***

Applicant's arguments filed September 26<sup>th</sup>, 2007 have been fully considered but they are not persuasive. The applicant first argues that the prior art of Day et al. is for paint samples and that Day et al. fail to disclose wall covering samples, which is what the applicant's display device is intended for. However, the examiner is not persuaded by this since (as the applicant pointed out) the display device of Day et al. is for paint samples, and anyone of ordinary skill in the art would recognize paint as a known wall covering.

Next, the applicant argues that Day et al. does not teach organizing the individual cases into different color groups. However, the examiner is not persuaded by this since Day et al. (as advanced above) clearly discloses organizing the samples in the deck of the cases by shades and color families. Additionally, the examiner would like to note just how broad a term "color group" is and how just how broadly it can be interpreted. For example, fluorescents are a color group, and within that "color group" there are various hues of fluorescents, such as fluorescent pinks, oranges, greens, yellows, etc. Also, a color group can be a certain range within the color spectrum, which may or may not include more than one hue or color family. For these reasons, and for the organization taught by Day et al. the examiner is not persuaded that Day et al. does not teach organizing into different color groups.

Lastly, the applicant argues that newly added claims 17-19 are allowable over the prior art. Not only is the addition of these new claims improper, since the applicant did not cancel and corresponding number of pre-existing claims, but the new claims only repeat the subject matter of claims 1, 4 and 5, which as indicated above, are still anticipated by the prior art of record.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Colleen M. Quinn whose telephone number is (571)272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571)272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Application/Control Number:  
10/758,440  
Art Unit: 3634

Page 8

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CMQ  
11/27/07

A handwritten signature in black ink, appearing to read "Brian E. Glessner", followed by a long horizontal line extending to the right.

BRIAN E. GLESSNER  
SUPERVISORY PATENT EXAMINER